

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2989 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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DILIPBHAI PRATAPRAI VASA

Versus

ASHVIN BHIKHALAL MAJITHIYA

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Appearance:

MR NM KAPADIA for Petitioner

MR YOGESH S LAKHANI for Respondent No. 1

MR SP DAVE, APP, for Respondent No. 2

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 04/08/1999

ORAL JUDGEMENT

1. Heard Mr. Kapadia, learned advocate for the petitioner, Mr. Gondalia, for Mr. Yogesh Lakhani, learned advocate for respondent No.1 and Mr. S.P. Dave, learned Additional Public Prosecutor for respondent No.2-State of Gujarat.

2. Rule. Mr. Gondalia waives service of Rule on behalf of respondent No.1 and Mr. Dave waives service on behalf of respondent No.2.

3. The petition is brought before this Court for quashing the complaint lodged by respondent No.1 against the petitioner before the learned Judicial Magistrate, First Class, Mundra (Kutch), registered by private Criminal Complaint No.75 of 1997 under Section 138 of the Negotiable Instruments Act and Section 420 of the Indian Penal Code.

4. The case of the petitioner is that the complaint is false and frivolous and is lodged only with a view to pressurise the petitioner. The basis of the complaint is a cheque bearing No.216114 drawn on Corporation Bank, Rajkot, for an amount of Rs.5,40,000/-. No amount is due from the petitioner to the complainant. This cheque was given to the complainant only by way of deposit, which was, in fact, returned by the complainant to the petitioner. But, somehow, the complainant managed to take the cheque back and then he has misused the cheque by presenting it before the bank for collection. It is further the case of the petitioner that because the petitioner learnt about the loss of cheque, he had issued advertisement in the newspaper and had also lodged a complaint and, therefore, the complaint may be quashed. As regards offence punishable under Section 420, it is stated that no ingredients of Section 420 of Indian Penal Code is made out and, therefore, the entire complaint deserves to be quashed.

5. Mr. Kapadia has reiterated the grounds. He has drawn attention of this Court to Annexure-C whereby it is acknowledged by the complainant that the said cheque was returned by him. The said document is a receipt for Rs.20,000/- wherein this endorsement is made and the same is signed by one Dharmendra Jesar and Ashwin Majithia, both of whom have signed as partners of Krishna Clearing Agency. He has taken this Court through the complaint to show that excepting incorporation of Section 420, there is no allegation to cover the ingredients of the offence punishable under Section 420 of Indian Penal Code and, therefore, the complaint deserves to be quashed. He has placed reliance on an unreported decision of this Court (Coram: H.R. Shelat, J.) in Misc. Criminal Application No.4524 of 1997 between Dipak Mangaldas Presswala and State Bank of Saurashtra, decided on 28th September, 1998. He has also placed reliance on another decision of this Court (Coram: S.D. Pandit, J.) in Criminal Misc. Application No.3025 of 1996 between Kaunteye Gaurangbhai

Nimaksari v. State of Gujarat, decided on 1st October, 1996 and submitted that the complainant has not approached the Court with clean hands; the allegations made are false; the cause for dispute is outcome of civil transactions and the dispute is, therefore, more or less of civil nature; and, therefore, the complaint deserves to be quashed. He lastly, submitted that the complainant has lodge this complaint as proprietor of Krishna Clearing Agency whereas in all earlier communications, Krishna Clearing Agency is shown as a firm of which Ashwin B. Majithia and Dharmendra Jesar have posed as partners and because the said firm is not registered, probably, this complaint is lodged by Ashwin Majithiya as proprietor of Krishna Clearing Agency. This is done in order to circumvent the provisions of Section 69 of the Indian Partnership Act and, therefore also, the complaint may be quashed.

6. Mr. Gondalia, learned advocate appearing for respondent No.1 submitted that it is true that respondent No.1 has not filed any affidavit controverting the claim of the petitioner, but the case of the petitioner is not maintainable from the documents produced by the petitioner himself. He has drawn attention of this Court to communication between the petitioner and his bank for stopping the payment. It was submitted that while instructing the bank to stop payment, the petitioner did not disclose anything about the loss of the cheque or theft and complaint therefor. The story of theft, subsequent advertisement, etc. is only an after thought and, therefore, the petition may not be entertained.

7. Mr. Dave, learned Additional Public Prosecutor has submitted that appropriate orders may be passed.

8. Considering the contentions raised by parties, what emerges is that there has been a commercial transaction between the parties and that commercial transaction has led to disputes. It transpires from a communication claimed to have been received by the petitioner (Annexure-F) which was written by the complainant-Ashwin Majithia that the complainant promised to return the cheque and E.P. copy. But there is no detail of identity of the cheque. This letter is dated 9th December, 1996. Against this, the communication sent by the petitioner to the Manager of Corporation Bank, Rajkot, which is dated 27th December, 1996 runs as under:-

13-D, Ajanta Apartment,  
Opp: Mahila College Chowk,  
Kishan Para, RAJKOT - 360001.  
Tele: 440039

Date: 27-12-96

The Manager,  
Corporation Bank,  
Rajkot - 360 001.

Dear Sir,

Request for stopping of Cheque - Cheque  
No.216114.

We have been dealing with your bank for  
the past four years from, our current A/C (A/C  
No.11293) of proprietorship firm named M/s VIDIMA  
EXPORTS, we had issued a cheque No.216114 dated  
15.12.96 in favour of M/s Krishna Clearing  
Agency, Mundra for Rs.5,40,000/-. Since we have  
already made the payment to the above party, we  
earnestly request you to stop the payment of  
Cheque No.216114.

Thanking you,

Yours faithfully,

For VIDIMA EXPORTS,

( DILIP P. VASA )  
Proprietor."

This communication only states that the petitioner has  
made the payment of the above party and, therefore, the  
payment is requested to be stopped. It does not state  
anything about the loss or theft of cheque as is shown in  
Annexure-B dated 6th December, 1996, which is prior to  
the date of the communication to the bank. Annexure-D  
Collectively also contains a certificate issued by Senior  
Police Sub-Inspector, "A" Division, Rajkot City on 9th  
December, 1996 that a complaint is lodged for loss of the  
cheque.

9. The important aspect is that a complaint is lodged for loss of cheque and for that a certificate is obtained on 9th December, 1996 and an advertisement is given on 6th December, 1996 about the loss of cheque whereas in the letter addressed to the Manager, Corporation Bank dated 27th December, 1996, reference is made to cheque No.216114 which is shown to be dated 15th December, 1996. How this aspect came to the knowledge of the petitioner would be a material question if, in fact, the cheque was stolen or lost and if the cheque was given as security which was returned on 1.12.1996. Under the circumstances, considering that various disputed facts and questions are involved, this Court is not inclined to entertain this petition and the same is dismissed. Rule is discharged. Interim relief granted earlier stands vacated.

11. The aspects as to complaint having been lodged as proprietor as against earlier correspondence being as partner of firm, question whether section 69 of Indian Partnership Act would be attracted or not, etc. are kept open.

10. It is clarified that any observations made hereinabove may not affect the merits of the case.

[ A.L. DAVE, J. ]

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